IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

Bail Appl..No. 3699 of 2007()

C.R.NO.5/07 OF EXCISE RANGE, PALA

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PETITIONER/ACCUSED:

SIVADAS P.K.,
AGED 46 YEARS,
PATARA HOUSE, EZHACHERY PO.,
KOTTAYAM DISTRICT.

BY ADV. SMT.DAISY A.PHILIPOSE

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13.6.07, THE COURT ON 13/06/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

B.A. No. 3699 OF 2007

Dated this the 13th day of June, 2007

O R D E R

In this Petition filed under Sec.439 Cr.P.C. the petitioner, who is the 2nd accused in C.R. No.5/2007 of Excise Range, Pala, for offences punishable under Secs.55(a) and 58 of the Abkari Act for allegedly having been found in possession of 167.250 liters of IMFL in a room, which is the portion of a larger building bearing No.KP VIII/146 at Kadanadu Panchayat, seeks his enlargement on bail.

2. The detection was on 1.5.2007 and in pursuance of a direction by this court while disposing of an application filed by the petitioner for anticipatory bail, the petitioner surrendered before JFCM, Erattupetta on 12.6.2007. His bail application was rejected and he was remanded to judicial custody, where he continues.

3. I heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

4. The petitioner had earlier approached this court with Crl.M.C.No.1614/2007 alleging that the petitioner is a rental occupant in respect of only one room out of a row of six rooms in the larger building and that the petitioner is running a petty tea shop in that room and the allegation levelled against the petitioner was false and that the room

from which the contraband liquor was seized was the adjacent room occupied by one Joy Augustine, which is covered by Annexure-A2 rent deed dated 1.2.2004. This court while disposing of the Crl.M.C. had directed the Investigating Officer to consider this contention of the petitioner. The petitioner subsequently filed B.A.No.2891/07 before this court seeking anticipatory bail and this court though was not inclined to grant anticipatory bail, directed the petitioner to surrender before the Magistrate concerned and seek regular bail. Thereafter, the petitioner surrendered before the Magistrate on 12.6.2007 and his application for bail was rejected and he was remanded to judicial custody. In the aforesaid application for anticipatory bail also, the petitioner had reiterated his contention that the contraband liquor was seized from the adjacent room. Still now the investigation appears to have been conducted with regard to this contention of the petitioner. The learned Public Prosecutor submits that the Excise Circle Inspector, who was conducting the investigation, is under orders of transfer and his substitute has not so far taken charge. The Public Prosecutor also was not able to enlighten this court with regard to the aforementioned contention of the petitioner. Having regard to the facts and circumstances of the case and also the decisions of this court in ***Sabu Vs. State of Kerala*** [2003 (2) KLT 173] and ***Mohanan Vs. State of Kerala*** [2007 (1) KHC 752], I am inclined to grant bail to the petitioner

but only with effect from a future date. Accordingly, the petitioner is directed to be released on bail with effect from 18.6.2007 on his executing a bond for Rs.20,000/- (Rupees twenty thousand only) with two solvent sureties each for the like amount to the satisfaction of the J.F.C.M., Erattupetta and subject to the following conditions:

a. Petitioner shall report before the Investigating Officer between 9 a.m. and 11 a.m. on all Wednesdays.

b. The petitioner shall make himself available for interrogation as and when required by the police till the filing of the final report.

c. The petitioner shall not influence or intimidate the prosecution witnesses nor shall he attempt to tamper with the evidence for the prosecution.

d. The petitioner shall not commit any offence while on bail.

If the petitioner commits breach of any of the above conditions, the bail granted to him shall be liable to be cancelled.

This application is allowed as above.

(V. RAMKUMAR, JUDGE)

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